

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

SUPPLEMENTAL SHEET FOR REGULAR MEETING OF MARCH 24, 2006

Prepared March 17, 2006

ITEM: 9

SUBJECT: Reissuance of Clean Water Act Section 301(h)-Modified NPDES Permit, Order No. R3-2006-0019, and Approval of Settlement Agreement, Morro Bay/Cayucos Wastewater Treatment Plant, San Luis Obispo County

ADDITIONAL COMMENTS AND RESPONSE

Discharger Comments: The City of Morro Bay/Cayucos Sanitary District (hereafter Discharger) submitted a detailed response to the Natural Resources Defense Council (NRDC)'s comment letter on March 3, 2006. That letter was included as Attachment 12 to the Staff Report for this item, so is not included here. Due to the timing of the submittal, staff could not provide a response in the Staff Report, so we are providing a response here.

The Discharger's submittal included an eight-page letter from the City of Morro Bay, a 27-page response to technical comments from the Discharger's consultant, Dr. Douglas Coats of Marine Research Specialists, a five-page response to comments by Dr. Bruce Bell from Carollo Engineers, and a four-page response to NRDC's comments from Carollo Engineers.

These responses are summarized in the following statement:

- "The Reissuance of a 301(h) modified discharge permit is legal and appropriate.
- The MBCSD monitoring data and analyses are timely, comprehensive, and pertinent to the NPDES discharge permit.
- There is no evidence that wastewater constituents enter the Morro Bay Estuary in any ecologically meaningful amount.
- The MBCSD discharge does not pose tangible human health risk.

- Monitoring data demonstrate the ability of the MBCSD discharge to comply with water-quality objectives.
- Limited increases in population over the next decade will not tangibly affect the MBCSD's ability to comply with discharge requirements on TSS and BOD.
- There is no plausible link between the MBCSD discharge and the occurrence of *T. gondii* seropositivity in otters.
- There is no evidence supporting the claims that the area around the MBCSD discharge lacks a balanced, indigenous marine population.
- MBCSD has demonstrated full compliance with the Endangered Species Act and the Marine Mammal Protection Act.
- The Schedule represents an upgrade as soon as reasonably possible and is in the best interest of the local communities.
- The proposed Settlement Agreement is a document thoroughly negotiated, in good faith, with the best interests of all parties involved and is compliant with all applicable law."

Staff Response: In general, the Discharger's comments are consistent with staff's discussion of these matters in the Staff Report and Fact Sheet. The Discharger's comments are well supported by the monitoring data record.

On page two of Carollo Engineers' response to NRDC, Carollo disputes NRDC's argument that the City of Watsonville completed a comparable upgrade in seven years. Carollo and NRDC

apparently are discussing different upgrades. The City of Watsonville upgraded from advanced primary to full secondary treatment standards in the early 1990s. That upgrade process required approximately seven years. The City of Watsonville is currently planning to add tertiary treatment facilities to produce recycled water. That upgrade is projected to require nine years or more.

Staff again asserts that no two upgrades are the same, and that it may be inappropriate to compare Watsonville's upgrade timelines to the Discharger's. The circumstances leading Watsonville's decisions to upgrade were different than the Discharger's.

NRDC Comments: NRDC submitted a response to the Dischargers's response to its initial comments on March 13, 2006, several days after the agenda package was mailed out. NRDC's submittal is attached. The submittal includes a seven-page letter, as well as a ten-page report prepared by Howard Kator in 2003 for Heal the Ocean, and a 32-page DRAFT study entitled *Salmonella spp., Vibrio spp., Clostridium perfringens, and Pleisomonas shigelloides in marine and freshwater invertebrates from coastal California ecosystems*. NRDC makes no reference to the relevance of these studies. Staff believes submittal of these lengthy studies at this point in the process is inappropriate, but agreed to include copies of the studies as a courtesy to NRDC.

In summary, NRDC asserts that the Water Board should not approve the upgrade schedule because it could be done faster. NRDC again argues that the discharge enters the Morro Bay estuary, therefore issuance of the 301(h)-modified permit is prohibited. NRDC again invokes California Water Code Section 13385 to argue that the upgrade must be completed as "fast as possible." NRDC then points out the differences among the various upgrade projects across the nation to which Carollo compared the Discharger's.

Staff Response: NRDC's argument that the reissuance of the 301(h)-modified permit is prohibited under 40 CFR 125.59(b)(4) because the discharge of pollutants "enters into saline estuarine waters" is not valid. This section of law prohibits

issuance of 301(h)-modified permits for direct discharges to saline estuarine waters, not this discharge to the open ocean. NRDC bases its argument on a 1985 dye study, which suggested that the discharge may enter the mouth of Morro Bay under certain infrequent oceanographic conditions. NRDC omits that this study found that the discharge was diluted from 16,700:1 to 91,000:1 (seawater:effluent) before entering the mouth of the Bay, and that was during flood tide conditions when the mouth of the Bay was hardly estuarine. This extremely high level of dilution before reaching the mouth of the Bay is verified by the Discharger's current offshore monitoring program, which is superior to the 1985 dye study in tracking the fate and transport of the discharge plume, and which indicates that the discharge is diluted by hundreds of parts of seawater within several meters of the outfall, and that the discharge plume is imperceptible at the mouth of Morro Bay. The stated prohibition clearly does not apply in this case.

California Water Code Section 13385 also does not apply to this case, so the argument that the upgrade must be completed "as fast as possible" is not valid. The referenced section is an exception to mandatory penalties for discharges that are subject to a Cease and Desist Order (CDO), but only if that CDO includes a time schedule that is "as fast as possible."

ATTACHMENTS

Natural Resources Defense Council submittal dated March 13, 2006

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